

HOUSE BILL 991
By Johnson R

AN ACT to enact the "Tennessee Deposit Beverage Container Recycling Act of 2003".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

WHEREAS, the general assembly finds that recycling is an important element of an integrated solid waste management system, which can protect and preserve environmental resources and reduce economic costs to residents and businesses within the state; and

WHEREAS, the general assembly finds a need to expand participation in recycling programs and to minimize costs to those participating and to government; and

WHEREAS, the purpose of this act is to increase participation and recycling rates for specified deposit beverage containers, provide a connection between manufacturing decisions and recycling program management, and reduce litter; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known as and may be cited as the "Tennessee Deposit Beverage Container Recycling Act of 2003".

SECTION 2. As used in this act, unless the context requires otherwise:

- (1) "Commissioner" means the commissioner of environment and conservation.
- (2) "Comptroller" means the office of the comptroller.

(3) "Consumer" means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit.

(4) "Dealer" means a person who engages in the sale of beverages in deposit beverage containers to a consumer for off-premises consumption in the state.

(5) "Department" means the department of environment and conservation.

(6) "Deposit beverage" means beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks regardless of dairy-derived product content, soda, or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container.

The term "deposit beverage" excludes the following:

(A) A liquid which is:

(i) A syrup;

(ii) In a concentrated form; or

(iii) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;

(B) A liquid which is a drug, medical food, or infant formula as defined by the Federal Food Drug and Cosmetic Act (21 U.S.C. § 301 et seq.);

(C) A liquid which is designed and consumed only as a dietary supplement and not as a beverage as defined in the Dietary Supplement Health and Education Act of 1994 (P.L. 103-417);

(D) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;

(E) Products designed to be consumed in a frozen state;

(F) Instant drink powders;

(G) Seafood, meat, or vegetable broths, or soups, but not juices; and

(H) Milk and all other dairy-derived products, except tea and coffee drinks with trace amounts of these products.

(7) "Deposit beverage container" means the individual, separate, sealed glass, polyethylene terephthalate, high-density polyethylene, or metal container less than or equal to sixty-four (64) fluid ounces, used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this state.

(8) "Deposit beverage distributor" means a person who is a manufacturer of beverages in deposit beverage containers in this state, or who imports and engages in the sale of filled deposit beverage containers to a dealer or consumer. The term includes federal agencies and military distributors, but does not include airlines and shipping companies that merely transport deposit beverage containers.

(9) "Import" means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or any entity outside of the state.

(10) "Importer" means any person who buys, brings, or accepts delivery of deposit beverage containers from outside the state for sale or use within the state.

(11) "On-premises consumption" means to consume deposit beverages by a consumer immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes.

(12) "Person" means an individual, partnership, firm, association, public or private corporation, federal agency, the state or any of its political subdivisions, trust, estate, or any other legal entity.

(13) "Recycling facility" means all contiguous land and structures and other appurtenances, and improvements on the land used for the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of

as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

(14) "Redeemer" means a person, other than a dealer or distributor, who demands the refund value in exchange for the empty deposit beverage container.

(15) "Redemption center" means an operation that accepts from consumers and provides the refund value for empty deposit beverage containers intended to be recycled and ensures that the empty deposit beverage containers are properly recycled.

(16) "Refillable beverage container" means any deposit beverage container which ordinarily would be returned to the manufacturer to be refilled and resold.

(17) "Reverse vending machine" means a mechanical device, which accepts one or more types of empty deposit beverage containers and issues a redeemable credit slip with a value not less than the container's refund value. The refund value payments shall be aggregated and then paid if more than one (1) container is redeemed in a single transaction.

SECTION 3.

(a) Beginning on October 1, 2003, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each polyethylene terephthalate, high-density polyethylene, or metal deposit beverage container manufactured in or imported into the state. The fee shall be imposed only once on the same beverage container. The fee shall be one-half cent (1/2¢) per beverage container.

(b) Beginning on October 1, 2005, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each deposit beverage container manufactured in or imported into the state. The fee shall be imposed only once on the same beverage. The fee shall be one cent (1¢) per beverage container.

(c) No county shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this act.

(d) Beginning January 1, 2006, the deposit beverage container fees shall be based on a previous calendar quarter's recycling rates as established by rules. The rates shall be as follows, based on the number of containers sold and the number recovered during a previous quarter:

(1) If the recovery rate is seventy percent (70%) or less: one cent (1¢) per container; and

(2) If the recovery rate is greater than seventy percent (70%): one and one-half cents (1.5¢) per container.

SECTION 4.

(a) By September 1, 2003, all deposit beverage distributors operating within the state shall register with the department, using forms prescribed by the department, and shall notify the department of any change in address or other information previously submitted. After September 1, 2003, any person who desires to conduct business in the state as a deposit beverage distributor shall register with the department no later than one (1) month prior to the commencement of the business.

(b) All deposit beverage distributors shall maintain records reflecting the manufacture of their beverages in deposit beverage containers as well as the importation and exportation of deposit beverage containers. The records shall be made available, upon request, for inspection by the department; provided, that any proprietary information obtained by the department shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any rule adopted pursuant to this act; or

(2) Under an order issued by a court or administrative agency hearings officer.

SECTION 5.

(a) There is established in the state treasury the deposit beverage container deposit special fund, into which shall be deposited:

(1) All revenues generated from the deposit beverage container fee as described under sections 3 and 6;

(2) All revenues generated from the deposit beverage container deposit as described under sections 6 and 10; and

(3) All accrued interest from this fund.

(b) Moneys in the fund shall be used to reimburse refund values and pay handling fees to redemption centers. The department may also use the money to:

(1) Fund administrative, audit, and compliance activities associated with collection and payment of the deposits and handling fees of the deposit beverage container fee and deposit program;

(2) Conduct recycling education and demonstration projects;

(3) Promote recyclable market development activities;

(4) Support the handling and transportation of the deposit beverage containers to end-markets;

(5) Hire personnel to oversee the implementation of the deposit beverage container fee and deposit program, including permitting and enforcement activities; and

(6) Fund associated office expenses.

SECTION 6. Deposit beverage container inventory report and payment.

(a) Beginning October 1, 2003, payment of the deposit beverage container fee and deposits as described in section 10 shall be made monthly based on inventory reports of the deposit beverage distributors. All deposit beverage distributors shall submit to the department documentation in sufficient detail that identifies:

(1) The number of beverages in deposit beverage containers, by container size and type, manufactured in or imported to the state; and

(2) The number of these deposit beverage containers, by container size and type, exported and intended for consumption out of the state during the reporting period.

(b) The amount due from deposit beverage distributors shall be the net number of deposit beverage containers imported into or manufactured into the state (the total number of containers imported or manufactured less the total number of containers exported for consumption outside the state) multiplied by the sum of the prevailing deposit beverage container fee and the refund value of five cents (5¢). Payment shall be made by check or money order payable to the "Department of Environment and Conservation, State of Tennessee". All inventory reports and payments shall be made no later than the fifteenth day of the month following the end of the payment period of the previous month.

SECTION 7.

The department may contract the services of a third party to administer the deposit beverage container program under this act.

SECTION 8.

The comptroller shall conduct a management and financial audit of the program for fiscal years 2004-2005 and 2005-2006, and for each fiscal year thereafter ending in an even-numbered year. The comptroller shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the general assembly and the department no later than twenty (20) days prior to the convening of the next regular session. The costs incurred by the comptroller for the audit shall be reimbursed

by the deposit beverage container program special fund. The comptroller may contract the audit services of a third party to conduct the audit.

SECTION 9.

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5. Full implementation of the deposit beverage container deposit program shall commence no later than January 1, 2006.

SECTION 10.

(a) By January 1, 2006, every deposit beverage container sold in this state shall have a refund value of five cents (5¢). Each container shall have the refund value clearly indicated on it as provided in section 12.

(b) The refund value is the amount of the deposit required. Once a refund value has been applied to a deposit beverage container, the deposit on that container may not be changed and shall be paid to the state.

(c) The deposit on each filled deposit beverage container shall be paid by the deposit beverage distributor, who manufactures or imports beverages in deposit beverage containers. Payment and reporting of the deposits shall be in accordance with section 6. The deposits shall be deposited into the deposit beverage container deposit special fund as described in section 5.

(d) Deposit beverage distributors who are required under subsection (c) to pay a deposit shall also pay a deposit beverage container fee and register with the state.

SECTION 11.

(a) Beginning January 1, 2006, every deposit beverage distributor who pays a deposit shall charge the dealer or consumer a deposit equal to the refund value for each

deposit beverage container sold in Tennessee. The deposit charge may appear as a separate line item on the invoice.

(b) Each dealer shall charge the consumer the deposit beverage container deposit at the point of sale of the beverage excluding sales for on-premises consumption. The deposit charge may appear as a separate line item on the invoice.

SECTION 12.

(a) Except as provided in subsection (b), every deposit beverage container sold in this state shall clearly indicate the refund value of the container and the word "Tennessee" or the letters "TN". The names or letters representing the names of other states with comparable deposit legislation may also be included in the indication of refund value. Other indications may be required as specified in rules.

(b) Subsection (a) does not apply to any type of refillable glass beverage container which has a brand name permanently marked on it and which has the equivalent of a refund value of at least five cents (5¢) which is paid upon receipt of such container by a dealer or distributor.

SECTION 13. Redemption of empty deposit beverage containers.

(a) Except as provided in subsection (b), a dealer shall:

(1) Operate a redemption center by accepting all types of empty beverage containers with a Tennessee refund value;

(2) Pay to the redeemer the full refund value for all deposit beverage containers which bear a valid Tennessee refund value; and

(3) Ensure each deposit beverage container collected is recycled, and forward documentation necessary to support claims for payment as stated in section 18, or rules adopted under this act.

(b) Subsection (a) shall not apply to any dealer:

(1) Who is located in a high-density population area as defined by the commissioner in rules, and within two (2) miles of a certified redemption center that is operated independently from a dealer;

(2) Who subcontracts with a certified redemption center for operation on the dealer's premises;

(3) Whose sale of deposit beverage containers are only via vending machines;

(4) Whose place of business is less than five thousand square feet (5,000 sq. ft.) of interior space;

(5) Who can demonstrate physical hardship, or financial hardship, or both, based on specific criteria established in rules; or

(6) Who meet other criteria established by the commissioner.

Notwithstanding paragraphs (1) and (2), the commissioner may allow the placement of redemption centers at greater than prescribed distances to accommodate geographical features while assuring adequate consumer convenience.

(c) All dealers, regardless of the square footage of the dealer's place of business, shall post a clear and conspicuous sign at each public entrance to the dealer's place of business, which specifies the name, address, and hours of operation of the closest redemption center locations.

(d) If there is no redemption center within the two-mile radius of a dealer due to the criteria described in subsection (b), then the respective county and the department shall determine the need for a redemption center in that area. If a redemption center is deemed necessary, then the department, with assistance from the county, shall establish the redemption center with funding from the deposit beverage container deposit special fund.

(e) Businesses that sell deposit beverages for on-premises consumption, such as hotels, bars, and restaurants, shall collect used deposit beverage containers from the consumer, and use a certified redemption center for the collection of containers, or become a certified redemption center.

SECTION 14.

(a) Prior to operation, redemption centers shall be certified by the department.

(b) Applications for certification as a redemption center shall be filed with the department on forms prescribed by the department.

(c) The department, at any time, may review the certification of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center and to the dealers served by the redemption center, the department, after it has afforded the redemption center operator a hearing in accordance with Tennessee Code Annotated, Title 4, Chapter 5, may withdraw the certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(d) Redemption centers shall:

(1) Accept all types of empty deposit beverage containers for which a deposit has been paid;

(2) Verify that all containers to be redeemed bear a valid Tennessee refund value;

(3) Pay to the redeemer the full refund value for all beverage containers, except as provided in section 16;

(4) Crush or destroy all deposit beverage containers that are accepted at the time of redemption;

(5) Ensure each container collected is recycled through a contractual agreement with an out-of-state recycler or an in-state recycling facility permitted

by the department; provided, that this paragraph shall not apply if the redemption center is operated by a recycler permitted by the department; and

(6) Forward the documentation necessary to support claims for payment as stated in section 18.

(e) Redemption centers' redemption areas shall be maintained in full compliance with applicable laws and with the orders and rules of the department, including permitting requirements, if deemed necessary, under the provisions of this act.

SECTION 15.

Reverse vending machines may be used by redemption centers to satisfy the requirements of section 13; provided that the reverse vending machine shall accept any type of empty deposit beverage container and pay out appropriate refunds via a redeemable voucher for those containers that bear a valid Tennessee refund value. If the reverse vending machine is unable to read the Tennessee refund value, then the department shall specify a delayed date in which the reverse vending machines may be used. The reverse vending machine shall be routinely serviced to ensure proper operation and continuous acceptance of containers and payment of refunds. All deposit beverage containers accepted by a reverse vending machine shall either be crushed or destroyed at the point of redemption.

SECTION 16.

Redemption centers shall refuse to pay the refund value on any broken, corroded, dismembered, flattened deposit beverage container, or any deposit beverage container which:

- (1) Contains a free flowing liquid;
- (2) Does not properly indicate a refund value; or
- (3) Contains a significant amount of foreign material.

SECTION 17.

(a) The department shall pay to each certified redemption center a handling fee of not less than the prevailing beverage container fee for each deposit beverage

container redeemed by a consumer which is transported out-of-state or received by an approved in-state company for an approved end use for recycling or received by a department permitted recycling facility.

(b) Not less than thirty (30) days before paying the handling fees required by this section, the department shall publish a notice statewide in accordance with applicable state law of the recovery rate for the calendar quarter for which the handling fee will be paid. Payments for handling fees shall be made not less than six (6) months after the completion of the calendar quarter to which the payment applies.

(c) The handling fee shall be paid in addition to the refund value of each such empty beverage container. The department may choose to pay the handling fee and refund value on the basis of the total weight of the containers received by material type and the average weight of each container type.

(d) A handling fee and refund value may only be paid once for each container redeemed by a consumer and claimed by a redemption center in accordance with section 1.

SECTION 18.

The department shall pay certified redemption centers handling fees and refund values as described in section 17, based on collection reports submitted by the redemption centers. All redemption centers shall submit to the department, information on forms prescribed by the department. Information shall include at a minimum:

- (1) The amount and type of containers accepted and rejected;
- (2) The amount of refunds paid out;
- (3) The amount and weight of each type of containers transported out of state, or to a permitted recycling facility; and
- (4) Copies of out-of-state transport and weight receipts, or acceptance receipts from permitted recycling facilities. If the redemption center and the recycling facility are

the same entity, copies of out-of-state transport and weight receipts, or documentation of end use accepted by the department, shall also be included.

The requests for payment shall be no more frequent than two (2) times per month.

Beginning January 1, 2006, each center shall report the previous quarter's information no later than thirty (30) days after the end of that quarter so that the handling rate can be calculated.

Failure to timely submit the report shall postpone payment for those containers until they are timely submitted for a subsequent quarter.

SECTION 19.

Recycling facilities, in addition to any other requirements under this act or any other provision of law, shall prepare or maintain the documents involving empty beverage containers, as required by the department.

SECTION 20.

The records of the deposit beverage distributor, dealer, redemption center, and recycling facility shall be made available, upon request, for inspection by the department, a duly authorized agent of the department, or the auditor. Any proprietary information obtained by them shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any rule adopted pursuant to this act; or

(2) Under an order issued by a court or administrative agency hearings officer.

SECTION 21.

The department shall convene an advisory committee to assist it in developing any rules needed to implement this act. The department shall select members of the committee so as to obtain input on the state level as well as assess the impact on each individual county, consumers, recyclers, and the beverage industry. Members of the committee shall be appointed by the commissioner and shall serve at the commissioner's pleasure. A simple majority of the

committee members shall constitute a quorum for the purposes of recommending rules and providing input to the commissioner.

SECTION 22.

Any person who violates any provision of this act or any rule adopted pursuant to this act shall be fined not more than ten thousand dollars (\$10,000) for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be made through administrative, civil, or criminal actions.

SECTION 23.

(a) If the commissioner determines that any person has violated or is violating any provision of this act, any rule adopted pursuant to this act, or any term or condition of a certification or permit issued pursuant to this act, the commissioner may do any one

(1) or more of the following:

(1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;

(2) Issue an order assessing an administrative penalty for any past or current violation;

(3) Require compliance immediately or within a specified time; and

(4) Commence a civil action in circuit court in which the violation occurred or where the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a certification or permit issued under this act, and shall state with reasonable specificity the nature of the violation.

(c) Any order issued under this act shall become final, unless not later than twenty (20) days after the notice of order is served, the person or persons named therein request in writing a hearing before the commissioner. Any penalty imposed under this act shall become due and payable twenty (20) days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the commissioner. Whenever a hearing is requested on any penalty imposed under this act, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the commissioner shall require that the alleged violator or violators appear before the commissioner for a hearing at a time and place specified in the notice and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case. If after a hearing held pursuant to this section, the commissioner finds that a violation or violations have occurred, the commissioner shall:

(1) Affirm or modify any penalties imposed or shall modify or affirm the order previously issued; or

(2) Issue an appropriate order or orders for the prevention, abatement, or control of the violation involved, or for the taking of such other corrective action as may be appropriate.

If, after a hearing on an order or penalty contained in a notice, the commissioner finds that no violation has occurred or is occurring, the commissioner shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.

(e) If the amount of any penalty is not paid to the department within thirty (30) days after it becomes due and payable, the commissioner may institute a civil action in

the name of the state to collect the administrative penalty that shall be a government realization. In any proceeding to collect the administrative penalty imposed, the commissioner need only show that:

(1) Notice was given;

(2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;

(3) The administrative penalty was imposed; and

(4) The penalty remains unpaid.

(f) In connection with any hearing held pursuant to this section, the commissioner shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

SECTION 24.

(a) All glass container importers shall maintain records reflecting the manufacture of their glass containers as well as the importation and exportation of products packaged in glass. The records shall identify the type (glass deposit beverage container or non-deposit beverage glass container) and quantity of each type of glass container. The records shall be made available, upon request, for inspection by the department; provided, that any proprietary information obtained by the department shall be kept confidential, and shall not be disclosed to any other person except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any rule adopted pursuant to this act; or

(2) Under an order issued by a court or administrative agency hearing officer.

SECTION 25. The department shall provide quarterly reports on the deposit beverage container program to the general assembly and the governor for the period beginning October 1, 2003, and ending December 31, 2005. The reports shall contain, but not be limited to:

- (1) Performance indicators;
- (2) Measures of effectiveness;
- (3) Organization charts; and
- (4) Position descriptions of every type of position created and actual salaries paid to each employee.

The reports shall include recommended legislation for statutory changes.

If the administration of the program is contracted to a third party pursuant to section 7, a copy of the contract shall be appended to the next applicable report, and the contractor shall abide by these reporting requirements as well. The contractor's pay scales shall be comparable to equivalent positions in civil service.

SECTION 26. All positions established for the program established by this act shall be temporary positions. No permanent position shall be established for the program, and no temporary position shall be converted to a permanent position until explicitly authorized by the general assembly.

SECTION 27. The obligations to accept or take empty beverage containers and to pay the refund value and handling fees for such containers as described in this act apply only to containers originally sold in this state as filled beverage containers. A person who tenders to a dealer, distributor, redemption center, or bottler more than forty-eight (48) empty beverage containers that the person knows or has reason to know were not originally sold in this state as filled beverage containers is subject to the enforcement action and civil penalties set forth in this section. At each location where customers tender containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch (1") in height with the following information:

WARNING: Persons tendering containers for redemption that were not originally purchased in this state may be subject to a fine of the greater of one hundred dollars (\$100) per container or twenty-five thousand dollars (\$25,000) for each tender.

A person who violates the provisions of this section is subject to a civil penalty of the greater of one hundred dollars (\$100) for each container or twenty-five thousand dollars (\$25,000) for each tender of containers.

SECTION 28. Any refund moneys that remain unclaimed in the fund created pursuant to section 4 shall escheat to the state.

SECTION 28. This act shall take effect on July 1, 2003, the public welfare requiring it.